LIBRARY
SUPREME COURT, U. S.

OCT 3 1967
JOHN F. DAVIS, CLERK

No. 421

In the
Supreme Court of the United States
OCTOBER TERM, 1967

HONORABLE WILLIAM J. CAMPBELL, CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION,

Petitioner,

vs.

SOUTHERN RAILWAY COMPANY, a corporation,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

PHILIP H. CORBOY
JAMES P. CHAPMAN
One N. LaSalle Street
Chicago, Illinois 60602
Attorneys for Petitioner

The Scheffer Press, Inc.—ANdover 3-6850

TABLE OF CONTENTS

		PAGE
I.	The Railroad's New, Incorrect Claim That Petitioner Considered An Improper Standard In Denying Its § 1404(a) Motion Is A Clear Admission That The Court Of Appeals' Judgment Conflicts With Platt v. Minnesota Mining & Mfg. Co., 376 U.S. 240, 245 (1964)	1
II.	The Court, Pursuant To Its Supervisory Powers, Should Rule Whether Mandamus Is An Appropriate Method To Review § 1404(a) Motions, And If So, Under What Circumstances	5
III.	Assuming Petitioner Considered An Improper Standard, The Court Of Appeals Should Have Remanded The § 1404(a) Motion To Petitioner For Reconsideration Instead Of Issuing A Mandamus Writ	6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 421

HONORABLE WILLIAM J. CAMPBELL, CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION,

Petitioner,

vs.

SOUTHERN RAILWAY COMPANY, a corporation,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

I.

THE RAILROAD'S NEW, INCORRECT CLAIM THAT PETITIONER CONSIDERED AN IMPROPER STANDARD IN DENYING ITS § 1404(a) MOTION IS A CLEAR ADMISSION THAT THE COURT OF APPEALS' JUDGMENT CONFLICTS WITH PLATT V. MINNESOTA MINING & MFG. CO., 376 U.S. 240, 245 (1964).

For the first time in any court, the Railroad now contends that petitioner considered "an *unauthorized* and

altogether *improper* standard" in determining its §1404(a) motion—"the relative availability of justice in two Federal District Courts" (respondent's brief, p. 7) (emphasis added).

This contention is an obvious attempt to avoid the conflict between the Court of Appeals' judgment and this Court's rule in *Platt* v. *Minnesota Mining & Mfg. Co.*, 376 U.S. 240, 245 (1964) (see petition, pp. 7-9)—that is, assuming mandamus is appropriate in some circumstances, it can never be used to review *de novo* a §1404(a) order based on appropriate criteria. This new contention simply is not supported by the record.

As noted in the petition (p. 7) the Railroad, in requesting that the Court of Appeals issue a mandamus writ, did not and could not argue that petitioner considered improper or unauthorized criteria in denying its §1404(a) motion; rather, the *sole ground* urged by the Railroad was that petitioner was guilty of "an abuse of discretion" in denying its §1404(a) motions (R. 4) and that the location of witnesses, the parties, the site of the occurrence, etc. (R. 2-4) required that the cause be transferred to Tennessee.*

There is no evidence whatsoever in the record to justify the Railroad's belated argument that petitioner decided the §1404(a) motion on the basis of Mr. Underwood's contention that he could not obtain a fair trial in Knoxville. This was only one of several grounds Mr. Underwood

---

* Thus, the petition for a writ of mandamus concluded (R. 4):

> "Petitioner claims * * * that the balance of convenience to the parties and the witnesses is so overwhelmingly in favor of granting Petitioner's Motion to Transfer * * *, that the denial thereof was clearly erroneous and amounted to an abuse of discretion * * *."

presented against the Railroad's motion (R. 23-33). It is obvious, as petitioner indicated in his denial order, that there were other legitimate grounds—the convenience of the parties, the convenience of witnesses, the interests of justice—which in the proper exercise of petitioner's discretion could and did justify the denial.

The Railroad's need to rely on the "improper standard" argument in effect reflects its admission that the issuance of a mandamus writ where the trial judge considered only "proper standards" would conflict with the decisions of other Courts of Appeals and with the *Platt* case.

Thus, the Railroad acknowledges that there exists "disagreement among the circuits *on the more limited question* as to the power to review a district court decision which is based upon proper standards but in which it is asserted that the district court has abused its discretion" (respondent's brief, p. 11) (emphasis added).

However, this conflict extends beyond the Circuits. It is between the Court of Appeals and the Supreme Court. The primary issue (and hardly a "more limited question" for purposes of the instant petition) urged on this petition is that the Court of Appeals' judgment conflicts with the *Platt* case where *this Court* expressly condemned *de novo* review of transfer motions by appellate tribunals.

The Railroad's treatment of the *Platt* case is unusual: At one point in its brief (p. 7), the Railroad cites the *Platt* case to support its contention that petitioner allegedly considered an improper standard in denying its motion, and then apparently seeks to distinguish *Platt* because it involved analagous Criminal Rule 21(b) (pp. 8-9). The truth is that *Platt* has always been considered appli-

cable to §1404(a) motions; the Railroad cited it as pertinent authority in the Court of Appeals and all other courts have so considered it. See *A. Olinick & Sons* v. *Dempster Bros., Inc.*, 365 F. 2d 439, 445 (2nd Cir. 1966).*

The Railroad's contention that this Court should not review this cause because "the problem is being resolved by the Court of Appeals themselves" (respondent's brief, p. 11) assumes the very issue in question: first of all, as Judge Friendly indicated in *A. Olinick & Sons* v. *Dempster Bros., Inc.*, 365 F. 2d 439, 445 (2d Cir. 1966), the problem is *not* being resolved; secondly, and most importantly, as Judge Friendly further indicated, cases like *Olinick* are resolving the issue *contrary* to the *Platt* rule—that is, they permit mandamus to be used to review §1404(a) orders although the trial judge considered appropriate criteria only.

It is respectfully submitted that the respondent's brief is no answer to the instant petition; rather, the Railroad's belated and incorrect claim that petitioner considered improper criteria constitutes a strong, additional reason why this petition should be granted.

---

* *Koehring Co.* v. *Hyde Construction Co.*, 382 U.S. 362, 364 (1966) (respondent's brief, p. 8) did not distinguish *Platt* on any grounds pertinent to the instant petition, since it merely sustained "the right of the court of appeals itself to order a transfer under extraordinary circumstances where a district judge refused to comply with its mandate," *A. Olinick & Sons* v. *Dempster Bros., Inc.*, 365 F. 2d 439, 448 (2nd Cir. 1966) (footnote 5). In *Hoffman* v. *Blaski*, 363 U.S. 335, 340 (respondent's brief, p. 9), the Court noted that it was not called upon to decide the very issues raised by the instant petition: "Discretion of the district judge is not involved. Propriety of the remedy of mandamus is not assailed."

II.

THE COURT, PURSUANT TO ITS SUPERVISORY POWERS, SHOULD RULE WHETHER MANDAMUS IS AN APPROPRIATE METHOD TO REVIEW § 1404(a) MOTIONS, AND IF SO, UNDER WHAT CIRCUMSTANCES.

As noted in the petition (pp. 10-13), the Court has never decided whether the extraordinary writ of mandamus is a proper method to review § 1404(a) motions.

The significance of this issue was recognized by the Court on its own initiative in *Platt* v. *Minnesota Mining & Mfg. Co.*, 376 U.S. 240, 244 (1964):

> "Nor has the Government challenged the use of the extraordinary writ of mandamus as an appropriate means to review the refusal to transfer. We shall, therefore, not consider these matters here, assuming without deciding, their validity for purposes of this case."

The Railroad's brief cites § 1404(a) cases from all circuits, purportedly to show that each circuit has used mandamus to review § 1404(a) orders (pp. 9-10). Some of these cases obviously conflict with the primary *Platt* holding—mandamus is *improper* where the trial judge considered proper criteria.

But the Railroad's case review further indicates that the circuits apply a wide variety of standards to determine when mandamus is "proper"—"really extraordinary situations"; "clear-cut abuse of discretion"; "a clear abuse of discretion"; where denial was "arbitrary", etc.

This wide range of different, vague standards is a very compelling reason for the Court, pursuant to its supervisory power over the Courts of Appeals, to deter-

mine if mandamus is an appropriate method to review § 1404(a) motions, and if so, under what circumstances.

III.

ASSUMING PETITIONER CONSIDERED AN IMPROPER STANDARD, THE COURT OF APPEALS SHOULD HAVE REMANDED THE § 1404(a) MOTION TO PETITIONER FOR RECONSIDERATION INSTEAD OF ISSUING A MANDAMUS WRIT.

Assuming for purposes of argument only that petitioner considered an improper standard as the Railroad contends, the Court of Appeals still had no power to issue a writ of mandamus based on its *de novo* consideration of the § 1404(a) motion.

Thus, in *Platt* v. *Minnesota Mining & Mfg. Co.*, 376 U.S. 240 (1964), the Court held that the Court of Appeals correctly ruled that the trial judge in deciding a § 1404(a) motion should not have considered a party's alleged inability to obtain a fair trial in another federal district. The Court, however, stated that the Court of Appeals erroneously issued a mandamus writ directing that the case be transferred: "The District Court's use of an inappropriate factor did not empower the Court of Appeals to order the transfer" (376 U.S. at 244).

Rather, the Court of Appeals should have "vacate[d] the judgment of the District Court [which denied the § 1404(a) motion] and remand[ed] the case for reconsideration of the motion for transfer without reference to the ability of the United States to receive a fair and impartial trial in Minnesota." (376 U.S. at 246).

Similarly in the instant case, if the Court of Appeals felt petitioner considered an improper standard in denying the § 1404(a) motion, it should have vacated his denial order and remanded the case to him for reconsideration in light of proper standards only.

Respectfully submitted,

PHILIP H. CORBOY
JAMES P. CHAPMAN
One N. LaSalle Street
Chicago, Illinois 60602
Attorneys for Petitioner